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UNITED ARTISTS CORPORATION

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 UNITED ARTISTS CORPORATION,
a Delaware corporation,

12 Plaintiff,

13 v.
14

15 UNITED ARTIST STUDIOS LLC, a
Nevada limited liability company;
16 UNITED ARTIST FILM FESTIVAL
LLC, a Nevada limited liability
17 company; XLI TECHNOLOGIES
INC., a revoked Nevada corporation;
18 XLI41 L.L.C., a Nevada limited
liability company; JAMES P.
19 SCHRAMM, an individual; and
DOES 1-10, inclusive,

20 Defendants.
21

22 AND COUNTERCLAIMS.
23
24
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27
28

Case No. 2:19-cv-00828-MWF-MAAx

**PLAINTIFF AND COUNTER-
DEFENDANT UNITED ARTISTS
CORPORATION'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS EX PARTE
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION AGAINST
DEFENDANT SCHRAMM**

Date: TBD
Time: 10:00 a.m.
Courtroom: 350 W. 1st Street, 5A
Judge: Hon. Michael W. Fitzgerald

Complaint Filed: Feb. 5, 2019
FAC Filed: March 26, 2019

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1 **I. INTRODUCTION**

2 Throughout this lawsuit and even before it was filed, defendant James P.
3 Schramm has engaged in abusive and threatening behavior toward counsel for
4 Plaintiff United Artists Corporation (“United Artists”) and its representatives. Mr.
5 Schramm has most recently escalated his conduct to include alarmingly direct threats
6 and specific *personal attacks* toward Daniel Flores, in-house counsel (Executive Vice
7 President, Litigation) for Metro-Goldwyn-Mayer Studios Inc. (“MGM”), the parent
8 company of United Artists. On September 19, 2019, Mr. Schramm verbally and
9 physically assaulted Mr. Flores, United Artists’ client representative, in the lobby of
10 the Edward R. Roybal United States Courthouse following a hearing for which the
11 Honorable Maria A. Audero summoned Mr. Schramm to testify after Defendants
12 failed to produce documents and respond to discovery (for which the Court sanctioned
13 Mr. Schramm *personally* in the amount of \$5,000). During the two weeks following
14 that incident, Mr. Schramm has engaged in a multifaceted campaign of harassment
15 and intimidation of Mr. Flores, which is plainly aimed at bullying United Artists into
16 ending this lawsuit and which threatens to compromise the integrity of the legal
17 process, including tainting the potential jury pool. Ironically, Mr. Schramm recently
18 created a website purporting to expose “bullies,” but in reality it functions as Mr.
19 Schramm’s personal bully pulpit to attack Mr. Flores publicly by threatening to erect
20 thirty harassing and defamatory billboards in several major cities.

21 Because Mr. Schramm has repeatedly stated his intent to continue and *expand*
22 this vexatious campaign of harassment unabated in the absence of judicial
23 intervention, United Artists has no alternative but to seek a temporary restraining
24 order and preliminary injunction enjoining Mr. Schramm from continuing his
25 threatening and harassing conduct directed at Mr. Flores and United Artists’ other
26 counsel and employees.

27 \\\

28 \\\

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. Mr. Schramm Assaults Mr. Flores**

3 On September 19, 2019, following the hearing in this case before Magistrate
4 Judge Audero where Mr. Schramm was ordered to appear and testify about his
5 purported document collection, Mr. Schramm directed a verbal tirade at Mr. Flores,
6 which continued into the courthouse lobby, and resulted in Mr. Schramm physically
7 assaulting Mr. Flores. Declaration of Daniel Flores (“Flores Decl.”), ¶ 2-8.

8 Mr. Schramm’s harassing conduct began when Mr. Flores and his colleague
9 were in an elevator with Mr. Schramm and his counsel, Eric Sapir, after they exited the
10 courtroom. Immediately after the elevator doors closed, Mr. Schramm said, quite
11 loudly, “This is such bullshit!” and “this is a complete waste of time.” He continued,
12 speaking directly to Mr. Flores, “You guys are making this personal. Paul [Bost, United
13 Artists’ outside counsel,] is making this personal. Jill [Pietrini, United Artist’s lead
14 outside counsel,] is making this personal.” When Mr. Flores responded, “Jim, this isn’t
15 personal. If anybody made this personal, it was you,” Mr. Schramm repeated, “This is
16 such bullshit, this is a complete waste of time.” Mr. Flores then said, “I agree
17 completely, we could settle this right now if you’re willing to take a judgment and pay
18 us our attorney’s fees that we’ve incurred in prosecuting this case.” As the parties left
19 the elevator and walked toward the lobby, Mr. Schramm responded, “Pay you? Why
20 would I pay you?,” and Mr. Flores responded, “For infringing our trademarks.” *Id.* ¶
21 5.

22 Then Mr. Schramm, who was walking in front of Mr. Flores, stopped abruptly,
23 turned around, leaned forward intimidatingly, and shouted very loudly and menacingly
24 in Mr. Flores’s face, “WHAT FUCKING TRADEMARKS? HOW THE FUCK DID
25 I INFRINGE YOUR FUCKING TRADEMARKS, YOU MOTHERFUCKER?”
26 When Mr. Flores took his phone out of his pocket and asked Mr. Schramm to repeat
27 what he had just said, Mr. Schramm grabbed Mr. Flores’s wrist and wrested his phone
28 out of his hand. *Id.* ¶ 6.

1 **B. Mr. Schramm's Repeated Harassing Phone Calls and Emails to**
2 **Mr. Flores**

3 The following day, Friday, September 20, 2019, Mr. Flores's assistant reported
4 that she had been receiving phone calls from an anonymous caller asking to speak with
5 him. Over the weekend, Mr. Flores received two notifications that Mr. Schramm had
6 viewed his professional profile on LinkedIn. *Id.* ¶ 8.

7 Then, on Monday, September 23, 2019, Mr. Flores's assistant told him that
8 someone named Nick Coleman was on the phone for him. When Mr. Flores answered
9 the phone, there was silence. Mr. Flores then asked, "Who is this?" and the voice on
10 the other end said, "You know who this is." Mr. Flores again asked the caller again to
11 identify himself. The caller then said "you're fucking with me...you're threatening
12 me...you're harassing me...," and after some dialogue, it became clear that the caller
13 was Mr. Schramm. Throughout the conversation, Mr. Schramm repeated several times
14 that Mr. Flores was harrassing him, "fucking with him," and threatening him, stating
15 "You made things personal" and that Mr. Flores "acted personally." Mr. Schramm then
16 warned that "soon enough" Mr. Flores would understood what he meant. He also
17 proposed several times to meet in person to "clear things up." Mr. Schramm ended the
18 call by saying "you've been warned" and abruptly hung up. *Id.*

19 On Wednesday, September 25, 2019, Mr. Flores received an email from Mr.
20 Schramm with the subject line, "My issue with you." The email reads as follows:

21 PLEASE NOTE: THIS IS DIFFERENT, SEPARATE AND
22 NOT RELATED TO THE LAWSUIT YOU HAVE
23 AGAINST ME AND MY COMPANIES.

24 Dan,

25 Just wanted to give you a heads up on how serious I am
26 taking your harrassment, threats and attack on me in the
27 lobby of the federal courthouse building.

28 Go ahead and check out this link:
 <https://www.biasloser.com/current-bias-losers>

 I will not allow anyone to deliberately violate me and my
 rights as I believed you did.

1 This is just the beginning.

2 Jim

3 Flores Decl. ¶ 9, Ex. A.

4 Later that same day, Mr. Flores received *another* email from Mr. Schramm.
5 The email reads as follows:

6 PLEASE NOTE: THIS IS DIFFERENT, SEPARATE AND
7 NOT RELATED TO THE LAWSUIT YOU HAVE
AGAINST ME AND MY COMPANIES.

8 Look at the "PLEASE NOTE" This means that you can
communicate with me directly.

9 Dan,

10 Again, This is personal Dan.

11 This is between you (as an individual) and me (as an
12 individual).

13 Sending this to Paul and Jill is a waste of time because this is
a separate {sic} situation as I was very clear in my past email.

14 I have decided to move the billboard launch date in LA to
15 Oct 1, 2019 (will have to start with a digital billboards now)
and extending the outdoor PSA for an additional 6 months
16 and will add bench ads and big bus ads.

17 <https://www.biasloser.com/current-bias-losers>

18 Jim

19 Flores Decl. ¶ 11, Ex. C.

20 When Mr. Flores clicked on the URL in Mr. Schramm's September 25, 2019
21 emails, he discovered that Mr. Schramm had created a website devoted to harassing
22 and – notwithstanding Mr. Schramm's use of the term "opinion" – defaming Mr.
23 Flores. *Id.* ¶ 10, Ex. B. The webpage contains digitally altered images showing Mr.
24 Flores's face on billboards with the following text: "BIASLOSER.COM. 'It is in my
25 opinion that Daniel M. Flores who is a Beverly Hills Attorney and studio exec. has
26 THREATENED and HARASSED ME in hopes to TAKE MY COMPANY.' JPS."
27 Mr. Schramm's emails and webpage indicate that he intends to commence a television
28

1 advertising campaign and erect billboards with Mr. Flores's name and face on them
2 starting on October 1, 2019.

3 On September 26, 2019, Mr. Schramm posted a lengthy and public rant on
4 Facebook about Mr. Flores. The post encouraged viewers to visit his webpage about
5 Mr. Flores and included a photo of a digitally altered billboard with Mr. Flores's name
6 and photograph, which Mr. Schramm described as "a screenshot of the digital key art
7 mockup to show what the billboards will look like when they get installed the week
8 of Oct. 1, 2019. These ads and billboards will go up in LA, Utah, New York and
9 Vegas and continue for a year." Bost Decl. ¶ F, Ex. F.

10 On October 2, 2019 at 1:47 p.m., Mr. Schramm sent yet *another* email to Mr.
11 Flores stating the following:

12 Dan,

13 The first billboard (BiasLoser.com) went up yesterday.

14 There will be a lot more

15 Have a good day.

16 You want to find out where, call me and I will tell you.

17 I'm sure you will know when they go up in Beverly Hills,
18 Century City, West Hollywood and Burbank.

19 Flores Decl. ¶ 12, Ex. D.

20 The same day on October 2, 2019, less than two hours later at 3:37 p.m., Mr.
21 Schramm sent *another* email to Mr. Flores, identifying Mr. Flores' children by name,
22 and stating the following:

23 I told you that this was separate to the case. I told you that
24 this is a personal issue between you and me and now you
25 try to attach and relate it to something it is not attached
26 to? You actually lied on a court document and committed
27 perjury to a federal judge. I feel that you are a disgusting
28 dumbass.

Thank God there is video/audio surveillance of your wild
behavior which will prove that you lied to a federal
judge. You fabricated a different event than what actually
happened.

1 Can you really be that stupid?

2 There is video surveillance from 3 separate angles in that
3 lobby that show the facts.

4 I feel that you are not just a lying bully, but the most
5 disgusting form of human garbage that I have ever had to
6 deal with in my life.

7 I'm sure [names redacted] are so proud of their Dad being
8 such a bully and liar in order to hurt other
9 people. Something to look up to. Good Job Dad! I hope
10 your proud of yourself.

11 All I can do is express my feeling and rights utilizing the
12 first amendment to expose the scum that I feel you are and
13 have been to me.

14 I actually was contacted by a woman that worked at MGM
15 that is deciding to come forward after seeing the billboard
16 this morning and the facebook page. It sounds to me from
17 her description that you sexually harassed her. She will be
18 sending me an email with all the details on exactly what
19 happened and what you did to her. She said she has a
20 witness that you actually work with. It sounds to me that
21 she wants to expose you to Daniel. You're a popular
22 guy. It doesn't surprise me, because I feel that if you are a
23 bully and scumbag to one person, there is always others
24 that you do the same thing to.

25 I'm a Dad to {sic} and I could not imagine ever being a
26 bad example to my kids. I could never do that ever. How
27 can you do that? My kids will see that if your {sic}
28 bullied, that you can stick up for yourself. I am showing
them that you do not have to put up with anyone who
bullies you. That nobody has the right to take your
freedom of happiness away for no reason. This is one of
those examples. The power of media is very powerful,
more powerful than you and your position Daniel.

Expressing my rights and feelings about what you did to
me to the public will not stop.

Flores Decl. ¶ 13, Ex. E.

C. The Effects of Mr. Schramm's Harassment

Mr. Schramm's threatening and harassing conduct directed at Mr. Flores has
understandably caused Mr. Flores to become concerned about his personal safety and
the safety of his children, as well his professional reputation. Mr. Schramm's conduct

1 is exacerbated by his imposing physical size and volatile temper, which he displayed
2 when he attempted to intimidate Mr. Flores in the courthouse. Bost Decl. ¶ 6.

3 **D. Mr. Schramm's History of Abusive Conduct in This Case**

4 Mr. Schramm has acted abusively and threateningly since the advent of United
5 Artists' dispute with Defendants. Mr. Schramm's responses to United Artists' cease
6 and desist letters were strewn with profanity, invective, and baseless accusations
7 against United Artists and its outside counsel. Dkt. 2, ¶¶ 19-23, Exs. C-G. Mr.
8 Schramm also left a threatening voicemail with the chairperson of Sheppard Mullin
9 Richter & Hampton, LLP, United Artists' outside counsel's law firm. *Id.*, ¶ 20.

10 Around mid-July 2019, United Artists' outside counsel (Ms. Pietrini and Mr.
11 Bost) learned that Mr. Schramm had registered domain names bearing their names.
12 Bost Decl. ¶ 2. Mr. Schramm has also posted defamatory comments regarding Ms.
13 Pietrini on many public fora.¹ *Id.* ¶ 3.

14 Also, Mr. Schramm has hurled epithets and made threats of physical violence
15 against Mr. Bost. After the hearing on September 19, 2019 (discussed above), Mr.
16 Schramm and Mr. Bost, with their respective parties, approached the courthouse
17 elevators. Mr. Bost excused himself to use the restroom. As he did so, Mr. Schramm
18 said something to the effect, "What – are you afraid to get in the elevator with us?"
19 Mr. Schramm then said, "I have to go to the restroom too, but I'm afraid of what I
20 might do to [Mr. Bost] in there." Flores Decl. ¶ 4. Later, when the parties were
21 outside of the courthouse, Mr. Schramm yelled "Dickhead!" at Mr. Bost. Bost Decl.
22 ¶ 4.

23 **III. LEGAL STANDARD**

24 A temporary restraining order may be issued upon a showing "that immediate
25 and irreparable injury, loss, or damage will result to the movant before the adverse
26

27 ¹ Given the defamatory nature of the statements by Mr. Schramm and to prevent
28 further dissemination, United Artists will not identify the URLs on which they were
made, but will do so at the hearing on this matter or will submit this information *in camera* upon request by the Court. Bost Decl. ¶¶ 2-3.

1 party can be heard in opposition.” Fed.R.Civ.P. 65(b)(1)(A). The standards for
2 granting a temporary restraining order and a preliminary injunction are identical.
3 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
4 2001) (observing that an analysis of a preliminary injunction is “substantially
5 identical” to an analysis of a temporary restraining order). In order to be entitled to
6 preliminary injunctive relief, a party must demonstrate “that he is likely to succeed on
7 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
8 relief, that the balance of equities tips in his favor, and that an injunction is in the
9 public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing
10 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

11 **IV. THE COURT SHOULD ENJOIN MR. SCHRAMM’S THREATENING**
12 **AND HARASSING CONDUCT AND ORDER HIM TO IDENTIFY**
13 **AND REMOVE ALL OF HIS HARASSING INTERNET POSTS AND**
14 **BILLBOARDS**

15 **A. The Court May Enjoin Mr. Schramm’s Conduct Pursuant to its**
16 **Inherent Authority to Control the Conduct of its Litigants**

17 This Court may enjoin Mr. Schramm’s threatening and harassing conduct
18 pursuant to its inherent powers. Well-established authority holds that federal courts
19 have the inherent power to manage their own proceedings and to control the conduct
20 of those who appear before them. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 33 (1991)
21 (finding that a district court’s invocation of its inherent power to assess attorney’s fees
22 as a sanction for a party’s bad faith conduct was within its discretion). “[W]hereas
23 [the Federal Rules and other laws] reach[] only certain individuals or conduct, the
24 inherent power extends to a full range of litigation abuses” and can “fill in the
25 interstices.” *Id.* at 46.

26 “Injunctive relief, where warranted, can be a useful tool to aid a court in
27 controlling the conduct of litigants” in furtherance of the court’s “inherent power.”
28 *Lewis v. S.S. Baune*, 534 F.2d 1115, 1121 (5th Cir. 1976). Courts have long
recognized the “inherent power of federal courts to regulate the activities of abusive
litigants” through, for example, pre-filing injunctions. *De Long v. Hennessey*, 912

1 F.2d 1144, 1147 (9th Cir. 1990); *Yates v. Belli Deli*, No. C 07-01405 WHA, 2007 WL
2 2318923, at *3 (N.D. Cal. Aug. 13, 2007) (“[A] district court has the inherent power
3 to issue an injunction against litigants who harass their opponents.”).

4 In granting a request for a preliminary injunction prohibiting a litigant’s
5 threatening and harassing conduct, the court in *Myart v. Taylor* held that it could,
6 under its inherent power, appropriately exercise jurisdiction over the conduct at issue
7 because it was directly related to the instant lawsuit. *Myart v. Taylor*, No. SA: 5:16-
8 CV-736-DAE, 2016 WL 5376227, at *4 (W.D. Tex. Sept. 26, 2016) (noting that
9 “[t]he individuals Mr. Myart has been contacting are the parties he has sued in this
10 Court, and it appears that the subject of this suit and the subject of Mr. Myart’s
11 conduct towards the Defendants in this case is the same.”). In that case, the
12 harassment at issue “occurred in the form of repetitive telephone calls, threats—either
13 real or perceived—to Defendants’ safety, contact with represented parties outside the
14 presence of their attorney, and behavior that has disrupted the daily functioning [of
15 defendants’ place of business].” *Id.* As a result, the court entered a preliminary
16 injunction enjoining the plaintiff from: (1) directly contacting the opposing party; (2)
17 threatening or harassing the opposing party; (3) entering the opposing party’s place
18 of business; (4) making phone calls to the opposing party’s place of business; and (5)
19 personally serving documents on the opposing party for the pendency of the lawsuit.
20 *Id.* at *5.

21 Mr. Schramm’s threatening and harassing conduct against United Artists and
22 its counsel is directly comparable to the plaintiff’s conduct in *Myart*. Accordingly, a
23 similar injunction should be entered here.

24 **B. Mr. Schramm Does Not Have the Right to Intimidate United**
25 **Artists or Its Counsel**

26 So long as it is narrowly tailored, an injunction against a litigant’s threatening
27 and harassing conduct is not an unconstitutional prior restraint and would not run
28 afoul of the First Amendment. *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559,

1 580 (5th Cir. 2005) (affirming injunction prohibiting threatening and harassing
2 communications). Prior restraints are “administrative and judicial orders forbidding
3 certain communications when issued in advance of the time that such communications
4 are to occur” and they are presumptively unconstitutional. *Alexander v. United States*,
5 509 U.S. 544, 550 (1993). However, as the Fifth Circuit has explained:

6 Courts have made a distinction between communication and
7 harassment. *See, e.g., Giboney v. Empire Storage & Ice Co.*, 336 U.S.
8 490, 502, 69 S.Ct. 684, 93 L.Ed. 834 (1949). The difference is one
9 between free speech and conduct that may be proscribed. *See e.g.,*
10 *R.A.V. v. City of St. Paul*, 505 U.S. 377, 389, 112 S.Ct. 2538, 120
L.Ed.2d 305 (1992). Although restrictions based upon conduct may
incidentally restrict speech, the courts have found that such a restriction
poses only a minimal burden on speech. *See, e.g., id.* . . . Thus, ***courts***
do have the power to enjoin harassing communication.

11 *Test Masters*, 428 F.3d at 580 (emphasis added). *Test Masters* involved conduct
12 similar to Mr. Schramm’s obstreperous conduct at issue here. In that case, a party,
13 Singh, had made repeated telephone calls to the opposing party and the calls included
14 the screaming of obscenities as well as future threats. *Id.* at 579. In addition, as in
15 this case, Singh engaged in a verbal and physical altercation with opposing counsel
16 in the hallway outside the district courtroom. *Id.* In reviewing the district court’s
17 injunction, the Fifth Circuit held that it “swept too broadly when it prohibited all
18 communication,” but held that there was “enough evidence presented in the record to
19 justify an injunction order prohibiting Singh from threatening or harassing” the
20 opposing party and its counsel and upheld that portion of the injunction. *Id.* at 580.

21 In a later decision, the Fifth Circuit held that the injunction against harassment
22 in *Test Masters* also applied to harassing internet postings and rejected Singh’s
23 challenge on First Amendment grounds. *Test Masters Educ. Servs., Inc. v. Robin*
24 *Singh Educ. Servs., Inc.*, 799 F.3d 437, 451 (5th Cir. 2015). The court upheld the
25 district court’s finding that Singh had violated the injunction by “instruct[ing]
26 employees to post negative comments about [the opposing party] on various
27 websites” and “aid[ing] in the posting of defamatory videos online.” *Id.*

1 In this case, Mr. Schramm's online activities likewise constitute threatening
2 and harassing conduct. The Court should therefore enter a similar injunction
3 prohibiting Mr. Schramm from threatening and harassing United Artists' employees
4 and counsel.

5 **V. PRELIMINARY INJUNCTIVE RELIEF IS WARRANTED**

6 United Artists can establish the traditional standards for obtaining interim relief
7 in this case, even though such an exacting standard may not be applicable in this
8 instance. In *Myart v. Taylor*, the court questioned whether it was necessary to
9 establish the traditional standards of injunctive relief when considering an injunction
10 against harassment that is ancillary to the merits of the case and held that the movants
11 had demonstrated a sufficient need for the injunction without demonstrating a
12 likelihood of success on the underlying merits. The court noted that:

13
14 In certain circumstances, "the traditional standards of injunctive relief
15 ... do not apply to the issuance of an injunction ..." *Baum v. Blue Moon*
16 *Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008) (finding that a Court,
17 when issuing a pre-filing injunction sua sponte against a vexatious
18 litigant, need not find that the person's actions are causing irreparable
19 injury, nor need they find that there is no adequate remedy at law).
20 Here, the Moving Defendants do not put at issue their likelihood of
21 success on the merits in this case. Rather, Defendants seek only to
22 enjoin Mr. Myart from engaging in certain conduct in connection with
23 prosecution of the instant lawsuit. Accordingly, the Court finds that the
24 Defendants have submitted sufficient evidence and testimony in
25 support of their Motion. While this does not satisfy the traditional
26 standard requiring the moving party to show a likelihood of success on
27 the merits of their case, the Moving Defendants have demonstrated a
28 need for an injunction in connection with this case.

2016 WL 5376227, at *4.

23 In this case, United Artists has already demonstrated a likelihood of success on
24 the merits of its trademark infringement claim, and has obtained a preliminary
25 injunction against Defendants, including Mr. Schramm. Dkt. 41. United Artists also
26 has sufficient evidence demonstrating the need for injunctive relief and can satisfy the
27 traditional standards required to obtain a preliminary injunction.

28 ///

1 **A. United Artists is Likely to Succeed on the Merits**

2 In assessing whether to enjoin a litigant’s harassing conduct, courts in this
3 District have looked to the substantive rights created by Cal. Civ. Proc. Code § 527.6,
4 which allows a party to seek an order prohibiting certain types of harassment without
5 filing a complaint or asserting a separate cause of action. Cal. Civ. Proc. Code §
6 527.6(a)(1) & (d). These courts have “applie[d] the substance of the state law” along
7 with the procedural rules of Fed.R.Civ.P. 65. *See, e.g., Volis v. City of Los Angeles*
8 *Hous. Auth.*, No. CV-13-01397-MMM-SPX, 2013 WL 12205684, at *1 (C.D. Cal.
9 July 22, 2013) (recognizing that § 527.6 “creat[es] substantive rights against certain
10 types of harassment”); *Principe v. Curry*, No. 8:17-CV-00608-JLS-KESX, 2018 WL
11 1406912, at *2 (C.D. Cal. Jan. 3, 2018) (explaining that a federal litigant need not
12 bring a separate cause of action to seek relief from harassment under § 527.6).

13 Section 527.6 defines harassment as “unlawful violence, a credible threat of
14 violence, or a knowing and willful course of conduct directed at a specific person that
15 seriously alarms, annoys, or harasses the person, and that serves no legitimate
16 purpose.” Cal. Civ. Proc. Code § 527.6(b)(3). “Unlawful violence” is “any assault
17 or battery, or stalking.” *Id.* at § 527.6(b)(7). “Credible threat of violence” is “a
18 knowing and willful statement or course of conduct that would place a reasonable
19 person in fear for his or her safety or the safety of his or her immediate family, and
20 that serves no legitimate purpose.” *Id.* at § 527.6(b)(2). “Course of conduct” is “a
21 pattern of conduct composed of a series of acts over a period of time, however short,
22 evidencing a continuity of purpose, including following or stalking an individual,
23 making harassing telephone calls to an individual, or sending harassing
24 correspondence to an individual by any means, including, but not limited to, the use
25 of public or private mails, interoffice mail, facsimile, or email.” *Id.* at § 527.6(b)(1).
26 Additionally, the harassment “must be that which would cause a reasonable person to
27 suffer substantial emotional distress, and must actually cause substantial emotional
28 distress to the petitioner.” *Id.* at § 527.6(b)(3).

1 Mr. Schramm's conduct clearly constitutes harassment under these standards.
2 As detailed in Mr. Flores's declaration, Mr. Schramm engaged in unlawful violence
3 constituting harassment on September 19, 2019 when he assaulted Mr. Flores
4 following a hearing in this case. Flores Decl. ¶¶ 2-8. Mr. Schramm further harassed
5 Mr. Flores with credible threats of violence when he used subterfuge to contact Mr.
6 Flores on September 23, 2019 and stated that he had a "personal" issue with Mr.
7 Flores and that "soon enough" Mr. Flores would understand what he meant; proposed
8 to meet in person to "clear things up"; and ended the call saying, "You've been
9 warned." *Id.* ¶ 8. In addition, Mr. Schramm engaged in a harassing course of conduct
10 by repeatedly calling Mr. Flores's office and sending him threatening emails from
11 September 20, 2019 through October 2, 2019. *Id.* ¶¶ 8-13, Exs. A-E. Mr. Schramm
12 further threatened to continue his harassing conduct through an advertising campaign
13 against Mr. Flores starting "the week of Oct. 1, 2019," a threat which he claims to
14 have made good on. *Id.* ¶ 12, Ex. D. Taken together, there is no doubt that Mr.
15 Schramm's conduct constitutes harassment. *See, e.g., Nicholas v. Mitchell*, No.
16 A132763, 2012 WL 6054090, at *2 (Cal. Ct. App. Dec. 5, 2012) ("[Even] a single act
17 of violence or a threat of violence may justify issuance of a restraining order when
18 there is a reasonable certainty that wrongful acts will continue or be repeated.").

19 There is also no credible argument that Mr. Schramm's conduct serves any
20 legitimate purpose. In fact, Mr. Schramm's language in his unwanted
21 communications to Mr. Flores indicates that the intended purpose of his conduct is to
22 intimidate Mr. Flores into ending the lawsuit. For instance, following the hearing and
23 before assaulting Mr. Flores, Mr. Schramm repeatedly referred to the lawsuit, stating,
24 "This is such bullshit! This is a complete waste of time." *Id.* ¶ 5. He then assaulted
25 Mr. Flores by shouting loudly and menacingly in his face, "WHAT FUCKING
26 TRADEMARKS? HOW THE FUCK DID I INFRINGE YOUR FUCKING
27 TRADEMARKS, YOU MOTHERFUCKER?" *Id.* ¶ 6. Mr. Schramm's September
28 26, 2019 Facebook post further falsely complains that Mr. Flores has been trying to

1 steal Mr. Schramm's companies. Bost Decl. ¶ 5, Ex. F. Mr. Schramm's conduct has
2 escalated now to referencing Mr. Flores's children by name. Flores Decl. ¶ 13, Ex.
3 E. This evidences Mr. Schramm's cyberstalking of Mr. Flores and is, for all intents
4 and purposes, a thinly veiled threat of harassment and harm by Mr. Schramm against
5 Mr. Flores' children if Mr. Flores pursues this case on behalf of his employer. Since
6 Mr. Flores had no prior relationship with Mr. Schramm, his conduct can only be
7 motivated by this lawsuit, and it constitutes an attempt to influence the outcome
8 through intimidating and repeatedly harassing United Artists' in-house counsel.

9 This Court has already determined that United Artists is likely to prevail in its
10 claim of trademark infringement and has issued a preliminary injunction against
11 Defendants. Dkt. 41. This case therefore differs from *Principe v. Curry* in which the
12 court found that the communications at issue had the legitimate purpose of informing
13 the public debate over cryptocurrency. 2018 WL 1406912, at *3. Here, there is no
14 legitimate purpose in Mr. Schramm's personal attacks against United Artists' in-
15 house counsel regarding this dispute.

16 Further, the harassment at issue is of the type that would cause a reasonable
17 person to suffer substantial emotional distress, and it has in fact caused Mr. Flores to
18 suffer substantial emotional distress. Aside from Mr. Schramm's ongoing
19 communications causing disruptions at his workplace, Mr. Flores is now worried
20 about his personal safety and that of his children, as well as his professional
21 reputation. Flores Decl. ¶ 14. In addition, Mr. Schramm's conduct has affected other
22 MGM employees who now fear that Mr. Schramm will engage in similar threats and
23 harassment towards them if he ascertains their identities. Numerous courts have
24 confirmed that the bar for demonstrating "substantial emotional distress" is not high.
25 In *Quick v. Bond*, No. A097954, 2002 WL 31689723, at *6 (Cal. Ct. App., Dec. 2,
26 2002) the court held that a petitioner's testimony regarding anxiety and worry is
27 sufficient, and that a petitioner need not show physical symptoms of emotional
28 distress or that he or she sought counseling or medication. A petitioner's direct live

1 testimony concerning emotional distress is not required in cases where there is
2 sufficient circumstantial evidence of substantial emotional distress based on
3 defendant's harassing conduct. *Ensworth v. Mullvain*, 224 Cal.App.3d 1105, 1110–
4 11 (1990). In *Armstrong v. Parker*, No. F065640, 2013 WL 6795409, at *4 (Cal. Ct.
5 App. Dec. 23, 2013), the court concluded that “[h]arassing correspondence through
6 Facebook posts and messages falls within [the] broad statutory definition” of a
7 harassing “course of conduct” under Section 527.6. The court held that “[i]t is
8 reasonable for a person to feel alarmed, annoyed, or harassed by the fact that such
9 comments have been made about them on a public or semi-public website such as
10 Facebook” and that “[t]his type of behavior could easily cause a reasonable person to
11 experience substantial emotional distress.” *Id.* Similarly, in *Glaser v. Meserve*, No.
12 B240385, 2013 WL 1460339, at *6 (Cal. Ct. App. Apr. 11, 2013), the court found
13 sufficient evidence of emotional distress where the evidence showed that the
14 defendant confronted the plaintiff in public and posted negative consumer reviews on
15 the internet. Here, Mr. Flores's declaration contains sufficient evidence of similar
16 conduct — public confrontation, negative online content, and now public billboards
17 — that would cause a reasonable person to suffer substantial emotional distress, as
18 well as testimony concerning the anxiety and worry that Mr. Flores actually suffered
19 as a result of Mr. Schramm's conduct.

20 Mr. Schramm shows no signs of stopping his behavior. Indeed, his stated plan
21 is to erect numerous billboards attacking Mr. Flores: 10 billboards in the Los Angeles
22 area (Beverly Hills, Century City, Sunset/West Hollywood, and by LAX); 10
23 billboards in New York (Times Square); 10 billboards in Las Vegas; and 5 in Utah
24 (where Mr. Flores attended college.) Flores Decl. ¶ 10, Ex. B. Mr. Schramm purports
25 to have the wherewithal to execute this campaign as he has represented that he runs a
26 “media and promotions conglomerate.” Dkt. 24-3, ¶ 8.

1 Accordingly, United Artists is likely to succeed in showing that Mr. Schramm
2 has engaged, and will continue to engage, in harassment warranting the issuance of
3 injunctive relief.

4 **B. United Artists is Likely to Suffer Irreparable Harm in the Absence**
5 **of a Preliminary Injunction**

6 A plaintiff seeking a TRO must demonstrate that irreparable injury is “likely”
7 in the absence of preliminary relief. *Winter*, 555 U.S. at 22. The threatened harm
8 must be imminent. *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674
9 (9th Cir. 1988).

10 In this case, irreparable injury is highly likely and imminent. Mr. Schramm has
11 already made several threats about future conduct, and then made good (or claims that
12 he made good) on those threats. His harassing communications have threatened
13 further harassment of Mr. Flores, by, for example, stating that “soon enough” Mr.
14 Flores would understand what he means, “You’ve been warned,” and “This is just the
15 beginning.” Flores Decl. ¶¶ 8, 9. In addition, he has set up a website for the purpose
16 of harassment that contains, and publicly solicits, defamatory content about Mr.
17 Flores (which conduct is not immunized by Mr. Schramm’s statement that he is
18 merely stating his “opinion”). *Id.* ¶ 10, Ex. B. And, in email communications and
19 online posts, he has threatened to institute an advertising campaign against Mr. Flores
20 starting “the week of Oct. 1” and continuing for the next year. *Id.* ¶¶ 10-11, Exs. A,
21 B. On October 2, 2019, Mr. Schramm confirmed that his advertising campaign
22 against Mr. Flores had begun. *Id.* ¶ 12, Ex. D. All told, this conduct suggests that
23 physical harm to Mr. Flores (or his family) may be imminent, that harm to Mr.
24 Flores’s reputation is ongoing, and that further reputational harm is imminent.

25 Mr. Schramm’s conduct also threatens imminent and irreparable harm to
26 United Artists because of its potential to dissuade Mr. Flores and other members of
27 MGM’s legal team from fully participating in this lawsuit as legal representatives of
28 United Artists. Mr. Schramm’s menacing conduct following the last hearing may also

1 dissuade members of MGM's legal team from participating in this case, which could
2 negatively impact its ability to litigate this case and cause irreparable harm to United
3 Artists' interests. Finally, Mr. Schramm's actions are intended to, and may in fact,
4 taint the potential jury pool in this case, as Mr. Schramm promises to erect billboards
5 in the Los Angeles area. *Id.* ¶ 12, Ex. D.

6 A court order enjoining Mr. Schramm from engaging in further harassing and
7 threatening conduct directed at United Artists' legal representatives and employees is
8 warranted and should be issued immediately.

9 **C. The Balance of the Equities Weighs in United Artists' Favor**

10 The balance of the equities weighs in favor of granting United Artists' motion.
11 Importantly, as the court in *Myart v. Taylor* recognized under similar circumstances,
12 an injunction narrowly tailored to prohibit threatening and harassing conduct against
13 an opposing party would not prevent Mr. Schramm from effectively defending his
14 case or communicating with United Artists. 2016 WL 5376227, at *5. Moreover,
15 "an injunction does not prevent Mr. [Schramm] from expressing his views about
16 [United Artists], so long as he does so in a manner that does not constitute personal
17 harassment." *Id.* Accordingly, United Artists has satisfied the third criterion for the
18 issuance of a TRO and preliminary injunction.

19 **D. An Injunction is in the Public Interest**

20 The public interest would likely be furthered by the issuance of a TRO and a
21 preliminary injunction in this case. First, Mr. Schramm's harassment of United
22 Artists' counsel threatens to interfere with this litigation, and an injunction would help
23 ensure the fair administration of justice, which furthers the public interest. Second,
24 the acts sought to be enjoined are clearly harassing and have been declared unlawful
25 and against the public interest by the State of California. Cal. Civ. Proc. Code § 527.6.
26 An injunction will serve to uphold state law and is therefore in the public's interest.
27 *Idaho v. Coeur d'Alene Tribe*, 49 F. Supp.3d 751, 764 (D. Idaho 2014), *aff'd*, 794 F.3d
28

1 1039 (9th Cir. 2015). United Artists has therefore met the fourth criterion for the
2 issuance of a TRO and preliminary injunction.

3 **E. Any Bond Requirement Should Be Minimal**

4 Fed.R.Civ.P. 65 requires the moving party to post a bond before the issuance
5 of a preliminary injunction “in such sum as the court deems proper” for the payment
6 of any costs or damages the defendant may incur from a potentially wrongful
7 injunction. However, the court “may dispense with the filing of a bond when it
8 concludes there is no realistic likelihood of harm to the defendant from enjoining his
9 or her conduct.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citation
10 omitted). In this case, United Artists’ likelihood of succeeding on the merits is high,
11 making the likelihood of a “wrongful” injunction low. Thus, if this Court requires a
12 bond at all, it should be in the amount of \$1,000. *See, e.g., Myart*, 2016 WL 5376227,
13 at *5 (entering an injunction prohibiting harassing conduct and requiring a \$1,000
14 bond as security).

15 **VI. CONCLUSION**

16 Based on the foregoing, United Artist respectfully requests that the Court
17 modify its existing injunction, or in the alternative, issue a separate TRO and
18 preliminary injunction prohibiting Mr. Schramm from threatening and harassing
19 conduct directed at United Artists’ employees and counsel.

20 Respectfully submitted,

21 SHEPPARD MULLIN RICHTER & HAMPTON LLP
22

23 Dated: October 3, 2019

24 By /s/ Jill M. Pietrini

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UNITED ARTISTS CORPORATION

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